

The Rise of Bank Prosecutions

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INTRODUCTION

Before 2008, prosecutions of banks had been quite rare in the federal courts, and the criminal liability of banks and bankers was not a topic that received much public or scholarly attention. In the wake of the last financial crisis, however, critics have begun to ask whether prosecutors adequately held banks and bankers accountable for their crimes. Senator Jeff Merkley complained: “[A]fter the financial crisis, the [Justice] Department appears to have firmly set the precedent that no bank, bank employee, or bank executive can be prosecuted.”¹ Federal judge Jed Rakoff and many others asked why prosecutors brought, with one or two low-level exceptions, no prosecutions of bankers in the wake of the 2007–2008 financial crisis and whether they were too quick to settle corporate cases by merely compelling fines and “window-dressing” compliance reforms.² The response from the Department of Justice (DOJ) to criticism of its approach towards corporate and financial prosecutions has ranged from stern denial that it had been remiss—as when Attorney General Eric Holder announced in a video message in 2014 that “[t]here is no such thing as too big to jail” and that no financial institution “should be considered immune from prosecution”³—to reform in the face of

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1. Press Release, Senator Jeff Merkley, *Merkley Blasts ‘Too Big to Jail’ Policy for Lawbreaking Banks*, (Dec. 13, 2012), <http://www.merkley.senate.gov/news/press-releases/merkley-blasts-too-big-to-jail-policy-for-lawbreaking-banks> [<http://perma.cc/BY2U-GUE9>].
 2. Jed S. Rakoff, *The Financial Crisis: Why Have No High-Level Executives Been Prosecuted?*, N.Y. REV. BOOKS (Jan. 9, 2014), <http://www.nybooks.com/articles/2014/01/09/financial-crisis-why-no-executive-prosecutions/> [<http://perma.cc/V5BQ-C2E9>]; see also Robert Quigley, *The Impulse Towards Individual Criminal Punishment After the Financial Crisis*, 22 VA. J. SOC. POL’Y & L. 103 (2015); David Zaring, *Litigating the Financial Crisis*, 100 VA. L. REV. 1405, 1410–11 (2014).
 3. Jonathan Weil, *There Is Still Such a Thing as ‘Too Big to Jail,’* BLOOMBERGVIEW (May 6, 2014), <http://www.bloombergview.com/articles/2014-05-06/there-is-still-such-a-thing-as-too-big-to-jail> [<http://perma.cc/37LT-6NEL>].

acknowledged lack of public confidence in its approach—as when the DOJ in 2015 adopted policies designed to make corporate prosecutions more effective.⁴

In this Essay, I describe the remarkable rise in the number of bank prosecutions in recent years, as well as the still steeper rise in criminal penalties imposed on banks. 2015 was the year that bank prosecutions finally came into their own, both in the record-breaking size of the fines and in the numbers of cases resolved. While the DOJ can claim marked achievements in recent years, which I detail here, I nevertheless caution against treating these data as fully answering critics' concerns. Despite the apparent rise of bank prosecutions, important “too big to jail” concerns remain: prosecution deals are inadequate both as punishments and as rehabilitative efforts designed to promote compliance. Upon closer examination, the recent string of bank prosecutions, while noteworthy, fails to address persistent concerns that deterrent fines are not routinely imposed, that compliance terms designed to rehabilitate firms are not used effectively, and that individuals remain largely un-prosecuted.⁵

In the sections that follow, I first describe the data on increasing corporate penalties generally, as well as penalties levied by prosecutors against financial institutions specifically, with a focus on 2015, a year in which prosecutors obtained record bank fines and numbers of bank prosecutions.⁶ Second, I will ask whether those penalties are adequate, by examining how seemingly large sums paid may actually represent highly reduced penalties given what prosecutors could have imposed on banks for the alleged conduct. Third, I ask whether banks are being adequately deterred or rehabilitated, where some of the same banks have engaged in repeated violations without suffering more serious consequences, compliance terms appear not to be taken seriously or compliance is unknown, and individuals are prosecuted only in a minority of these cases. I conclude by discussing what might further enhance the ability of

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4. U.S. ATTORNEYS' MANUAL § 9-28.000, PRINCIPLES OF FEDERAL PROSECUTION OF BUSINESS ORGANIZATIONS (Nov. 2015), <http://www.justice.gov/usam/usam-9-28000-principles-federal-prosecution-business-organizations> [<http://perma.cc/E58C-658T>]; Press Release, Dep't of Justice, Deputy Attorney General Sally Quillian Yates Delivers Remarks at New York University School of Law Announcing New Policy on Individual Liability in Matters of Corporate Wrongdoing (Sept. 10, 2015), <http://www.justice.gov/opa/speech/deputy-attorney-general-sally-quillian-yates-delivers-remarks-new-york-university-school> [<http://perma.cc/CL4T-JPAR>] (“Americans should never believe, even incorrectly, that one’s criminal activity will go unpunished simply because it was committed on behalf of a corporation.”).
 5. See BRANDON L. GARRETT, TOO BIG TO JAIL: HOW PROSECUTORS COMPROMISE WITH CORPORATIONS ch. 1 (2014) [hereinafter GARRETT, TOO BIG TO JAIL]; Brandon L. Garrett, *The Corporate Criminal as Scapegoat*, 101 VA. L. REV. 1789 (2015) [hereinafter Garrett, *The Corporate Criminal*].
 6. Here, I define financial institutions broadly to include “a range of types of companies that focus on financial transactions, including commercial banks, investment banks, insurance companies, and brokerages.” Garrett, *The Corporate Criminal*, *supra* note 5, at 1816.

prosecutors to deter bank crime and rehabilitate banks, and I suggest that we have reason to be optimistic that reforms will be taken seriously.

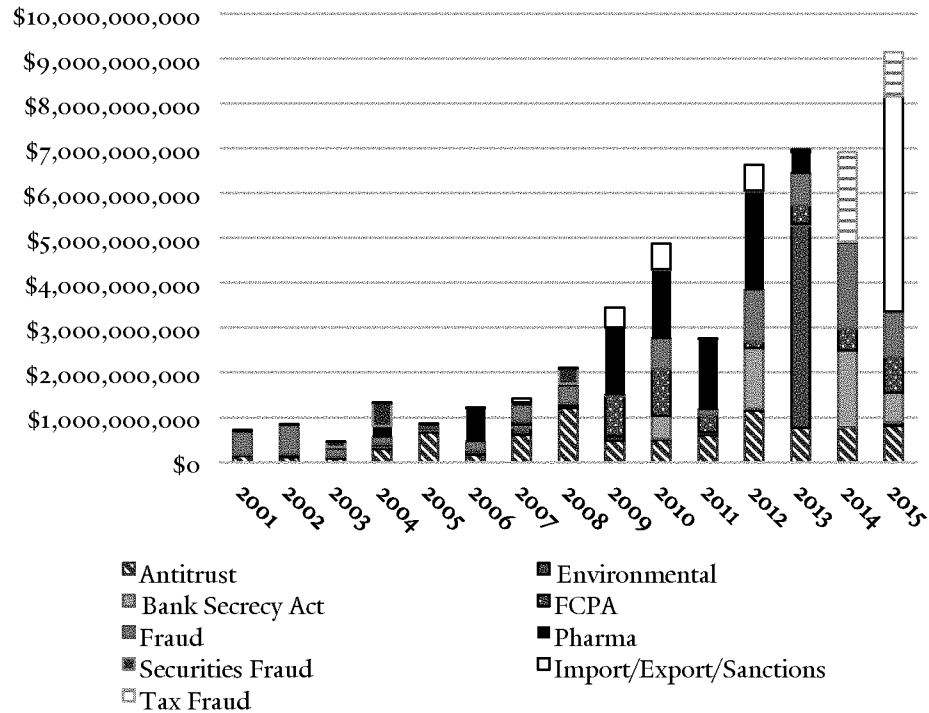
I. THE RISE IN BANK PENALTIES

In 2015, federal prosecutors settled a record number of cases with banks, and in the process imposed record criminal penalties, which critics had complained DOJ had failed to do in the past.⁷ Corporations paid record sums exceeding \$9 billion in penalties to federal prosecutors in 2015, and paid still more to regulators and others. In the last decade, my data show that federal prosecutors have set new records each year in corporate fines, breaking the ones set the previous year. The figure below illustrates these data, hand-collected from federal dockets in cases of plea agreements with companies and from deferred and non-prosecution agreements with companies.⁸

7. See *supra* notes 1-2.

8. Figure 1 updates data presented in GARRETT, *TOO BIG TO JAIL*, *supra* note 5. The Appendix of that book provides a detailed description of how these data were collected from public sources, chiefly federal district court dockets, Department of Justice releases, requests made to individual U.S. Attorney's Offices, and FOIA requests and litigation, see GARRETT, *TOO BIG TO JAIL*, *supra* note 5, at 297-301. Each of the deferred and non-prosecution agreements is available in an online resource. See Brandon L. Garrett & Jon Ashley, *Federal Organizational Prosecution Agreements*, U. VA. SCH. L., http://lib.law.virginia.edu/Garrett/prosecution_agreements/home.suhtml [<http://perma.cc/QA9Z-R6BX>] [hereinafter Garrett & Ashley, *Federal Organizational Prosecution Agreements*]. Each of the plea agreements from 2001-2013 is available on a separate online resource website. See Brandon L. Garrett & Jon Ashley, *Federal Organizational Plea Agreements*, U. VA. SCH. L., http://lib.law.virginia.edu/Garrett/plea_agreements/home.php [<http://perma.cc/4WHG-DKKX>] [hereinafter Garrett & Ashley, *Federal Organizational Plea Agreements*]. The 2014-2015 plea agreements are in the process of being added to that resource website, and both resource websites will soon be combined in a single resource, which will additionally permit users to search companies by status as public or privately-held companies, size of fine, type of crime, and other characteristics, including whether they are a financial institution. The cases to be added online are included in the Appendices to this Essay.

Figure 1.
FEDERAL CORPORATE CRIMINAL PENALTIES, 2001-2015



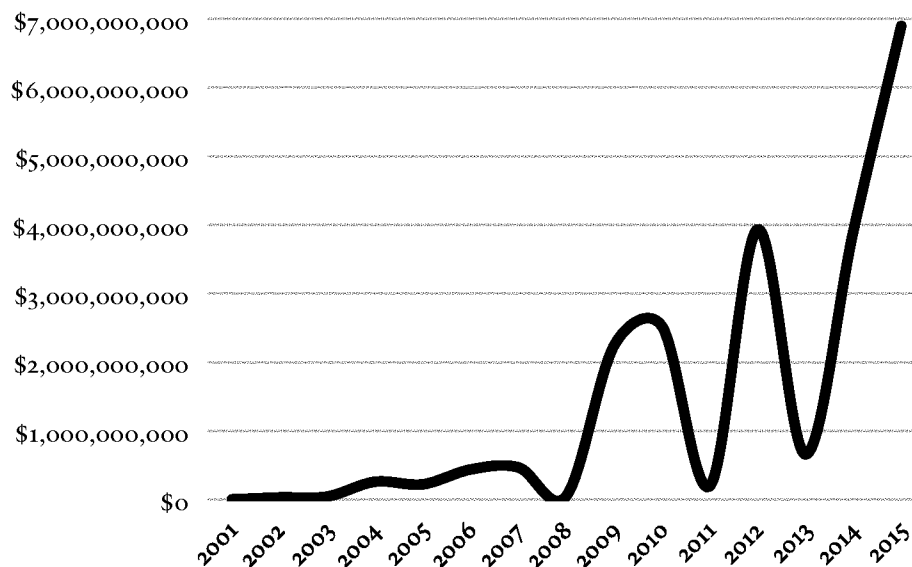
In 2015, almost \$7 billion of the total \$9 billion in corporate penalties paid to federal prosecutors came from banks. The two Appendices to this Essay detail each of the prosecution agreements reached with banks and financial institutions from 2001 to 2014, and then in 2015, as well as the penalties imposed in each case. Over \$22 billion in penalties have been paid to federal prosecutors by financial institutions from 2001-2015; over \$15 billion was paid just in the last five years, from 2011 to 2015.⁹ The figure below depicts the startling rise in penalties paid by financial institutions, defined to include banks and other financial institutions like hedge funds and insurance companies. One can see how few financial institutions were prosecuted from 2001-2014, with fewer than ten cases in each year prior to 2010. The first

9. In addition, banks have paid, by one estimate, almost \$200 billion in at least 175 settlements of enforcement actions since 2009, making the amounts paid as part of criminal enforcement actions only a small fraction of the total. Jeff Cox, *Misbehaving Banks Have Now Paid \$204B in Fines*, CNBC (Oct. 30, 2015), <http://www.cnbc.com/2015/10/30/misbehaving-banks-have-now-paid-204b-in-fines.html> [http://perma.cc/DCM6-N72F].

billion-dollar criminal penalty was imposed on a bank (UBS) in 2009, and many more have followed.¹⁰

Figure 2.

FINANCIAL INSTITUTION PROSECUTIONS AND PENALTIES, 2001-2015



In 2015, a remarkable number of banks—eighty of them—finalized cases with prosecutors. This constitutes about one-half of the organizations that entered prosecution agreements during the entire year, whether plea agreements¹¹ or deferred and non-prosecution agreements.¹² Each of these bank prosecutions is detailed in Appendix B.¹³ In 2015, bank prosecutions with large fines, apart from the record-setting BNP Paribas case, included the cases of: Deutsche Bank, which paid \$625 million in an antitrust case; Commerzbank, which paid \$641 million; and Crédit Agricole, which paid \$156 million in money laundering and export violation cases. Upon closer inspection, it is not

10. Deferred Prosecution Agreement, United States v. UBS AG, No. 09-60033-CR-COHN (S.D. Fl. 2009), http://lib.law.virginia.edu/Garrett/prosecution_agreements/sites/default/files/pdf/ubs.pdf [<http://perma.cc/L48G-GJRN>].

11. For the entire collection of such plea agreements, from 2001-2013, see Garrett & Ashley, *Federal Organizational Plea Agreements*, *supra* note 8.

12. For the entire collection of such deferred and non-prosecution agreements, see Garrett & Ashley, *Federal Organizational Prosecution Agreements*, *supra* note 8.

13. See *infra* Appendix B.

surprising that \$7 billion of \$9 billion in fines levied by federal prosecutions in 2015 came from cases involving banks. The only really substantial settlements from 2015 that did *not* involve banks were two that made up most of the \$2 billion remainder: the \$900 million paid by General Motors pursuant to a deferred prosecution agreement and the \$772 million paid by Alstom S.A. in a Foreign Corrupt Practices Act (FCPA) case.¹⁴

The bulk of the banks that settled prosecutions in 2015 did so as part of a “Swiss Bank Program,” a remarkable effort by the DOJ’s Tax Division designed to combat marketing of illegal tax shelters. Scores of Swiss banks paid almost \$1 billion in these settlements of tax prosecutions in 2015. The DOJ’s Program was designed to give incentives, via non-prosecution agreements, to the banks that fully cooperated and disclosed names of tax evaders in the U.S. that the banks enabled.¹⁵ The unusual and one-off Swiss Bank program is winding down, but in 2016 we will still see additional cases resolved with Swiss banks that will not receive such lenient non-prosecution deals. The first such settlement has been announced: Bank Julius Baer & Co. recently settled in a deferred prosecution agreement and agreed to pay \$547 million.¹⁶

It is noteworthy how many financial institutions are now being prosecuted—and with some regularity—such that they are no longer functionally immune from criminal prosecution. In contrast to this recent flurry of activity, very few financial institutions had been prosecuted in decades past. It was almost vanishingly rare for banks to be convicted of crimes, as Appendix A shows. From 2001–2012, I located just four bank convictions: those of Crédit Lyonnais, Delta National Bank & Trust Co., Pamrapo Savings Bank,

14. Exhibit A, United States v. \$900,000,000 in United States Currency, 1:15-cv-07342 (S.D.N.Y. 2015), http://lib.law.virginia.edu/Garrett/prosecution_agreements/sites/default/files/pdf/gm.pdf [<http://perma.cc/UBX2-RPYJ>]; Plea Agreement, United States v. Alstom S.A. (D. Conn. 2014), http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/22/alstom_sa_plea_agreement.pdf [<http://perma.cc/9KH8-RCZC>].

15. Press Release, Dep’t of Justice, Justice Department Announces Three Banks Reach Resolutions under Swiss Bank Program (July 16, 2015), <http://www.justice.gov/opa/pr/justice-department-announces-three-banks-reach-resolutions-under-swiss-bank-program> [<http://perma.cc/M5VZ-ARP2>].

16. Press Release, Dep’t of Justice, Criminal Charges Filed Against Bank Julius Baer of Switzerland with Deferred Prosecution Agreement Requiring Payment of \$547 Million, as Well as Guilty Pleas of Two Julius Baer Bankers (Feb. 4, 2016), <http://www.justice.gov/opa/pr/criminal-charges-filed-against-bank-julius-baer-switzerland-deferred-prosecution-agreement> [<http://perma.cc/58ER-KGRF>]. The Department of Justice has made materials from each of the Swiss Bank Program cases available on a very useful website. See *Swiss Bank Program*, DEP’T JUST., <http://www.justice.gov/tax/swiss-bank-program> [<http://perma.cc/BG4S-9U9W>].

and Riggs Bank.¹⁷ In the past decade and before, when banks were charged, they routinely received non-prosecution agreements not filed in court, much less resulting in an indictment or a conviction, as Appendix A also depicts. It was apparently a sign of additional vigilance that prosecutors slowly, in the past few years, began to insist on deferred prosecution agreements for major banks that are at least initially filed in court.¹⁸ Prosecutors announced convictions for SAC Capital in 2013, Japanese subsidiaries of UBS and Royal Bank of Scotland in 2013, and Cr dit Suisse and BNP Paribas in 2014.¹⁹ Now prosecutors routinely pursue banks, and in some of the most serious cases, they now seek a conviction through a guilty plea. Nevertheless, despite these important changes, the question remains whether these agreements impose adequate fines, function as deterrence, and facilitate the rehabilitation of banks and bankers.

II. CRIMINAL FINES AND DETERRENCE OF BANK CRIME

These billions of dollars in fines imposed in recent years are not all that they appear. The staggering fines cited above are dominated by a handful of blockbuster cases, and should not suggest that federal prosecutors have necessarily become more aggressive across the board.²⁰ While bank prosecutions have increased in number and size, in general, neither the number of companies prosecuted nor the number of public companies prosecuted has increased since 2001.²¹ The number of banks prosecuted had risen modestly, particularly from 2011-2014, and then the numbers shot up due to the Swiss

17. Appendix A; GARRETT, *TOO BIG TO JAIL*, *supra* note 5, at 349 n.16. In addition, several small mortgage companies and investment advisors were convicted during that time period. See Appendix A.

18. Ben Protess & Jessica Silver-Greenberg, *JPMorgan Is Penalized \$2 Billion Over Madoff*, N.Y. TIMES (Jan. 7, 2014, 9:37 PM), <http://dealbook.nytimes.com/2014/01/07/jpmorgan-settles-with-federal-authorities-in-madoff-case/> [<http://perma.cc/UQ9T-XFMK>] (observing that “the size of the fine and the rarity of a deferred-prosecution agreement—such deals are scarcely used against giant American banks and are typically employed only when misconduct is extreme—reflect the magnitude of the accusations”).

19. GARRETT, *TOO BIG TO JAIL*, *supra* note 5, at 258-59.

20. Average corporate fines have ranged from \$1 to \$16,000,000 from 2000-2012, far below the fines imposed in the blockbuster cases involving hundreds of millions of dollars or even billions in fines. See GARRETT, *TOO BIG TO JAIL*, *supra* note 5, at 294 (describing an increase in average corporate fines over the past two decades, from less than \$2,000,000 in average fines per year before 2000, to over \$15,000,000 in average corporate fines by 2010).

21. *Id.* at 261-62 (depicting numbers of federal corporate prosecutions from 1991 to 2012, showing a rise in numbers prosecuted in the 1990s, but a decline since the 2000s, even including cases resolved through deferred and non-prosecution agreements). To update that data, there were 150 such prosecutions identified in 2013, and 126 in 2014, but 164 in 2015, largely due to the Swiss Bank Program discussed *infra*.

Bank Program cases in 2015. However, with the Swiss Bank Program winding down, the number of bank prosecutions is likely to return to prior levels of roughly ten per year in the future.

One might counter that it is not the number of cases but the size of the penalties in the largest cases that has exponentially increased and should be our focus. Yet even these fines are often not all that they could be. In general, in almost half of the deferred and non-prosecution agreements with companies from 2001-2012, no criminal fine was imposed at all.²² When sentencing calculations were provided, the agreements typically stated that fines were at the bottom or below the bottom of the applicable range.²³ I also found that for public companies prosecuted from 2001-2012, fines averaged only 0.04 percent of market capitalization, while total payments made to prosecutors averaged just 0.09 percent.²⁴ To be sure, very few prosecutions of financial institutions, as the Appendices illustrate, involve no criminal fine at all. However, from the information disclosed, it appears the fines imposed were often dramatically reduced. To provide one example: in the Standard Chartered case, the bank admitted to having processed over \$240 billion in illegal transactions with Iranian clients, resulting in almost \$7 billion in pre-tax profits, yet the bank paid only \$674 million in combined civil and criminal penalties.²⁵

The largest criminal penalty of all time is another remarkable case in point. The bulk of the corporate criminal fines in 2015 came from the single record-shattering case of the French bank BNP Paribas, which paid \$4 billion to prosecutors and an additional almost \$5 billion to regulators and local prosecutors.²⁶ The prosecutors described a pattern of years of deliberate deception designed to conceal transactions with sanctioned regimes, particularly with Sudan. Despite the fact that federal prosecutors highlighted

22. GARRETT, TOO BIG TO JAIL, *supra* note 5, at 69.

23. *Id.* at 150 (noting that only thirty deferred or non-prosecution agreements from 2001-2012 included a guidelines calculation, and only three of those noted fines at the top of the applicable range).

24. *Id.* at 70.

25. For a detailed discussion of the case, see Kristie Xian, *The Price of Justice: Deferred Prosecution Agreements in the Context of Iranian Sanctions*, 28 NOTRE DAME J.L. ETHICS & PUB. POL'Y 631 (2014).

26. Plea agreement at 1-2, U.S. v. BNP Paribas S.A., June 27, 2015, at <http://www.justice.gov/sites/default/files/opa/legacy/2014/06/30/plca-agreement.pdf> [<https://perma.cc/F2XE-U2F3>]; see also Press Release, Dep't of Justice, BNP Paribas Sentenced for Conspiring to Violate the International Emergency Economic Powers Act and the Trading with the Enemy Act (May 1, 2015), <http://www.justice.gov/opa/pr/bnp-paribas-sentenced-conspiring-violate-international-emergency-economic-powers-act-and> [<http://perma.cc/Q628-2K5Y>]. The plea was negotiated in 2014 but the judgment was entered on May 1, 2015. Court Docket, USA v. BNP Paribas S.A., Docket No. 1:14-cr-00460 (S.D.N.Y. July 09, 2014).

how upper-level management condoned the sanctions violations and how bankers tried to cover up the transactions—calling it “truly a tour de fraud”—no individual bank employees were charged.²⁷ The almost \$9 billion in combined penalties—representing the total proceeds of the criminal activity prosecutors felt they could prove moved through the U.S. financial system—may have seemed quite large; even just the portion denominated as a criminal penalty was record-sized. But in fact, over \$190 billion in transactions may have been involved, and the fine calculation was, as is typical in such cases, highly non-transparent.²⁸ Forfeiting just the proceeds of a crime is certainly a starting point in a criminal case, but a corporation may also face fines of up to double the gain (or harm to victims).²⁹ BNP paid only \$140 million denominated as a criminal fine for purposes of punishment; the remainder of the payment was denominated as forfeiture³⁰ (although one advantage of that denomination is that the funds may be used to compensate individuals “who may have been harmed by the regimes of Sudan, Iran and Cuba”—an effort that the DOJ is “exploring”).³¹ Thus, the record penalty may actually be far lower than what could have been imposed, and the lack of transparency in the calculation of the fine amount makes it difficult to know how much larger the fine could have been and what kind of bargain prosecutors struck.

III. BANK RECIDIVISM, DETERRENCE, AND REHABILITATION

Recidivism by major banks further calls into question the effectiveness of these prosecution agreements. Federal prosecutors have repeatedly settled cases with the same major banks in a short span of years. Recidivist financial

27. Ben Protess & Jessica Silver-Greenberg, *BNP Paribas Admits Guilt and Agrees to Pay \$8.9 Billion Fine to U.S.*, N.Y. TIMES: DEALBOOK (June 30, 2014, 4:21 PM), <http://dealbook.nytimes.com/2014/06/30/bnp-paribas-pleads-guilty-in-sanctions-case/> [http://perma.cc/MZY8-C792].

28. Press Release, Dep’t of Justice, *BNP Paribas Agrees to Plead Guilty to Conspiring to Process Transactions Through the U.S. Financial System For Sudanese, Iranian, and Cuban Entities Subject To U.S. Economic Sanctions* (June 30, 2014), <http://www.justice.gov/usao-sdny/pr/bnp-paribas-agrees-plead-guilty-conspiring-process-transactions-through-us-financial> [http://perma.cc/HCT7-NVT8]; Joseph Ax et al., *U.S. Imposes Record Fine on BNP in Sanctions Warning to Banks*, REUTERS (July 1, 2014), <http://www.reuters.com/article/us-bnp-paribas-settlement-idUSKBN0F52HA20140701> [http://perma.cc/ZJ85-F5G8].

29. 18 U.S.C. § 3571(d) (2012) (alternative fine based on gain or loss).

30. The forfeitures were under 18 U.S.C. 981(a)(1)(C) and 28 U.S.C. 2461(c). See Consent Preliminary Order of Forfeiture, *U.S. v. BNP Paribas S.A.*, No. 1:14-cr-00460-LGS, (S.D.N.Y. July 9, 2014), <http://www.justice.gov/sites/default/files/opa/legacy/2014/06/30/consent-preliminary-forfeiture-money-judgement.pdf> [http://perma.cc/R3VW-Z7EU].

31. *BNP Paribas Sentenced for Conspiring to Violate the International Emergency Economic Powers Act and the Trading with the Enemy Act*, *supra* note 26.

institutions include AIG (deferred and non-prosecution agreements entered by two subsidiaries in 2004 and a non-prosecution agreement in 2006), Barclays (a deferred prosecution agreement in 2010, a non-prosecution agreement in 2012, and a guilty plea pending), Cr dit Suisse (a deferred prosecution agreement in 2009 and a plea agreement in 2014), HSBC (a non-prosecution agreement in 2001 and a deferred prosecution agreement in 2012), JP Morgan (a non-prosecution agreement in 2011, a deferred prosecution agreement in 2014, and a plea agreement pending currently), Lloyds (a deferred prosecution agreement in 2009 and a deferred prosecution agreement in 2014), the Royal Bank of Scotland (a deferred prosecution agreement in 2013, a guilty plea by a subsidiary in 2013, and a guilty plea currently pending), UBS (a deferred prosecution agreement in 2009, a non-prosecution agreement in 2011, a non-prosecution agreement in 2012, a guilty plea by a subsidiary in 2013, and a guilty plea currently pending), and Wachovia (a deferred prosecution agreement in 2010 and a non-prosecution agreement in 2011).³² While the cases cited are only the instances in which banks were repeatedly criminally prosecuted, still more banks have settled multiple civil enforcement cases with regulators (in some instances large numbers of civil cases).³³ One wonders how seriously prosecutors take recidivism among major financial institutions and how effective prosecutions have been in changing any underlying culture of law-breaking.

32. For links to each of the pending plea agreements, see Press Release, Dep't of Justice, Five Major Banks Agree to Parent-Level Guilty Pleas (May 20, 2015), <http://www.justice.gov/opa/pr/five-major-banks-agree-parent-level-guilty-pleas> [<https://perma.cc/76FD-HC5H>] [hereinafter Press Release, Five Major Banks]. The Royal Bank of Scotland and UBS each had Japanese subsidiaries plead guilty in 2013 as described here, see Press Release, Dep't of Justice, RBS Securities Japan Limited Agrees to Plead Guilty in Connection with Long-Running Manipulation of Libor Benchmark Interest Rates (Feb. 6, 2013), <http://www.justice.gov/opa/pr/rbs-securities-japan-limited-agrees-plead-guilty-connection-long-running-manipulation-libor> [<http://perma.cc/SV2B-XHL2>]; United States v. UBS Securities Japan Co. Ltd, DEP'T OF JUSTICE, <http://www.justice.gov/criminal-vns/case/ubssecurities> [<http://perma.cc/2W2X-97WT>].

33. See Cox, *supra* note 9 (reporting results of study of bank penalties, noting that Bank of America had settled thirty-four cases, paying \$77 billion in penalties; JP Morgan Chase had settled twenty-six cases, paying over \$40 billion in penalties; and Citigroup had settled eighteen cases, resulting in over \$18 billion in penalties). Unlike criminal penalties, however, civil settlements may be tax deductible—a source of criticism that civil penalty amounts may be in part borne by taxpayers. See, e.g., Phineas Baxandall & Michelle Surka, *Settling for a Lack of Accountability?*, U.S. PUBLIC INTEREST RESEARCH GROUP EDUCATION FUND (Dec. 2015) http://www.uspirg.org/sites/pirg/files/reports/USPIRG_SettlementsReport.pdf [<http://perma.cc/BAV6-LWHZ>]; Aruna Viswanatha & David Henry, *JP Morgan Settlement Could Cost Bank Closer to \$9 Billion*, THOMPSON REUTERS (Oct. 22, 2013), <http://www.reuters.com/article/us-jpmorgan-penalties-idUSBRE99L19720131022> [<http://perma.cc/RL25-WCHE>].

Still more mammoth bank cases lumber along in the courts, including several major pending cases that involve repeat-offender banks. In 2015, five major banks agreed to plead guilty in cases relating to foreign exchange (FOREX) currency manipulation.³⁴ Those banks have not yet been sentenced in the federal district court,³⁵ but assuming the judge approves the negotiated plea agreements in their current form, the banks will pay federal prosecutors \$5 billion more in fines, making for another year of record-setting corporate and bank penalties. Three of the banks—Barclays, JPMorgan and UBS—had been previously prosecuted in recent years. Prosecutors did say that UBS, when pleading guilty to the new FOREX violations in 2015, was in breach of an earlier 2012 agreement regarding LIBOR manipulation.³⁶ UBS then paid a \$203 million fine for that breach. Yet the puzzling consequence of the UBS breach of its prior prosecution agreement was a far *smaller* fine than what the other banks agreed to pay in the FOREX cases.³⁷ The consequences of recidivism appear highly uneven. The outcomes suggest that the “too big to jail” argument—the notion that banks are so vital to the economy that their crimes should be excused or treated leniently—retains currency, and applies even to banks that commit crimes repeatedly.

It is not clear that these banks are being rehabilitated through compliance terms either. These terms aim to prevent future crimes in a way that the payment of fines—ultimately borne by the shareholders—may not accomplish. We know little about how the compliance terms of prosecution agreements are being implemented, since the process is rarely described publicly by companies or prosecutors, and the reports of independent monitors who are sometimes tasked with supervising compliance are typically not made public.

The HSBC case is a rare case in which the summaries of monitor reports have been made public because Judge John Gleeson insisted that there be some reporting to the court.³⁸ As a result, we know that several years into the five-

34. See Press Release, Five Major Banks, *supra* note 32.

35. See, e.g., USA v. Barclays PLC, Docket No. 3:15-cr-00077 (D. Conn. May 20, 2015).

36. *Id.* (“According to the factual statement of breach attached to UBS’s plea agreement, UBS engaged in deceptive FX trading and sales practices after it signed the LIBOR non-prosecution agreement . . .”).

37. While UBS was in breach, it also received conditional immunity from prosecution for the new violations since it reported them to prosecutors. Kevin McCoy & Kevin Johnson, *Five Banks Guilty of Rate-Rigging, Pay More than \$5B*, USA TODAY (May 20, 2015), <http://www.usatoday.com/wlna/money/2015/05/20/billions-in-bank-fx-settlements/27638443/> [<http://perma.cc/WL78-B533>].

38. Judge Gleeson ordered an entire thousand-page monitor’s report made public in the HSBC case, calling it a “judicial document” relevant to his preliminary approval of the deferred prosecution and subject to judicial supervision, and therefore subject to a public right of access under the common law and the First Amendment. Memorandum and Order at 3-4, *United States v. HSBC Bank USA, N.A.*, No. 12-CR-00763 (E.D.N.Y. Jan. 28, 2016), ECF

year term of a deferred prosecution agreement with HSBC, the monitor has reported that compliance is still far from adequate and that reforms met with outright resistance, including in HSBC's U.S. investment bank.³⁹ The bank has reported that the monitor identified additional "instances of potential financial crimes."⁴⁰ The HSBC case raises the question of whether other independent monitors have uncovered similar failures to comply, but in reports that have not been made public. Major banks are massive institutions with global operations, and without substantial compliance efforts, the process may proceed slowly and with poor results. In more recent cases, prosecutors have insisted on guilty pleas, with the result that banks are placed on probation, with more formal court supervision, and with violation of probation as a potential consequence of non-compliance. Whether stricter oversight of compliance results from guilty pleas by banks remains to be seen.

Moreover, while banks pay fines, the actual bankers are not usually charged, much less sentenced to any time, making the individual-level deterrence of criminal conduct still more equivocal. I have found in a study of individual prosecutions accompanying prosecution agreements that among the 306 deferred and non-prosecution agreements from 2001-2014, 66 cases involved financial institutions, including commercial banks, investment banks, insurance companies, and brokerages. Individual prosecutions of officers or employees accompanied a little over one third or 23 of the 66 cases.⁴¹ Further, the individuals prosecuted were typically low-level employees;⁴² perhaps as a

No. 52. Judge Gleeson highlighted how the case involves "matters of great public concern," although partial sealing or redaction might be warranted if "narrowly tailored." *Id.* at 9-10. That ruling is on appeal to the Second Circuit. Nate Raymond, *HSBC Money Laundering Report's Release Likely Delayed: U.S. Judge*, REUTERS (Feb. 10, 2016), <http://www.reuters.com/article/us-hsbc-moneylaundering-idUSKCN0VI28H> [<http://perma.cc/656E-BVJV>].

39. Greg Farrell, *HSBC Falls Short on Compliance, Monitor to Report*, BLOOMBERG (Mar. 30, 2015 3:10 PM) <http://www.bloomberg.com/news/articles/2015-03-30/hsbc-falls-short-on-compliance-monitor-said-to-report> [<https://perma.cc/V3VC-HVX5>] (describing a "critical, 1,000 page report" by monitor which "raises doubts about how effective the government's use of deferred- and non-prosecution agreements is in reining in wrongdoing and changing culture at the world's largest banks"); Christie Smythe, *Judge Lets Sun Shine on Secret HSBC Money Laundering Report*, BLOOMBERG BUS. (Jan. 29, 2016 12:00 PM), <http://www.bloomberg.com/news/articles/2016-01-29/judge-lets-sun-shine-on-secret-hsbc-report-on-money-laundering> [<http://perma.cc/D7H3-CSP7>].

40. HSBC's 2015 Annual Report noted that while the Monitor found that HSBC had made "progress" in compliance, he also "expressed significant concerns about the pace of that progress, instances of potential financial crime and systems and controls deficiencies." Frances Coppola, *HSBC's Catalogue of Lawsuits*, FORBES (Feb. 28, 2016, 10:23 AM EST), <http://www.forbes.com/sites/francescoppola/2016/02/28/hsbcs-catalog-of-lawsuits/#356cod9e4d27> [<https://perma.cc/DR2W-2T2E>].

41. Garrett, *The Corporate Criminal*, *supra* note 5, at 1816.

42. *Id.* at 1802.

result, these individual prosecutions generally resulted in fairly low sentences for those that received any jail time.⁴³

In response to the widespread criticism, the non-prosecution of bank employees may slowly be starting to change. The DOJ announced, as noted, a set of new policies in fall 2015, revising charging guidelines and sharpening the focus on individuals in corporate crime cases.⁴⁴ A Delaware bank, Wilmington Trust, was indicted and high-level officers charged, including the former President and CFO.⁴⁵ Two LIBOR rigging cases went to trial in the Southern District of New York, resulting in convictions of former traders. To be sure, none of these cases answers the criticism that bankers were not charged after the last financial crisis; public concerns may understandably be more focused on the conduct that preceded the financial crisis than more recent frauds or violations with less potentially catastrophic consequences.⁴⁶

CONCLUSION

Bank prosecutions, virtually unheard of before the past decade, now dominate federal corporate criminal practice. Prosecutors in the United States have taken on complex financial institutions like never before, and in a way that their counterparts around the world have never done as aggressively. The billion dollar fines that prosecutors now routinely negotiate, and the sheer numbers of banks they target, send a deterrent message to the entire financial industry. They also lead to perhaps more punitive results than the use of civil

43. *Id.* at 1810-11.

44. See Memorandum from Sally Yates, Deputy Attorney Gen., U.S. Dep't of Justice, to the Heads of Dep't Components, U.S. Attorneys 1 (Sept. 9, 2015), <http://www.justice.gov/dag/file/769036/download> [<http://perma.cc/4U4P-JMGZ>]; DEP'T OF JUSTICE, UNITED STATES ATTORNEYS' MANUAL, § 9-28.000, Principles of Federal Prosecution Of Business Organizations (revised in November 2015), <http://www.justice.gov/usam/usam-9-28000-principles-federal-prosecution-business-organizations> [<http://perma.cc/52EH-9UT7>]. Then again, some predict prosecutors will over time "retreat" from an "all-or-nothing" approach towards the Yates Memo. See Chris Bruce, *U.S. Will Retreat on Yates Memo, Former DOJ Official Predicts*, BLOOMBERG L.: BANKING (Nov. 23, 2015), <http://www.bna.com/us-retreat-yates-n57982063844/> [<https://perma.cc/KG9E-VCVQ>]. Others, this author included, have argued that in context these new changes are not dramatic. See Brandon L. Garrett, *The Metamorphosis of Corporate Criminal Prosecution*, 101 VA. L. REV. ONLINE 60 (2015); Elizabeth E. Joh & Thomas W. Joo, *The Corporation as Snitch: The New DOJ Guidelines on Prosecuting White Collar Crime*, 101 VA. L. REV. ONLINE 51 (2015).

45. See Maureen Milford, *Wilmington Trust Indictment Unique in Financial World*, DELAWARE ONLINE (Aug. 9, 2015), <http://www.delawareonline.com/story/news/local/2015/08/09/wilmington-trust-indictment-unique-financial-world/31394625/> [<https://perma.cc/2WFK-A44N>].

46. For criticism focusing squarely on financial crisis related failures to prosecution, see, for example, Rakoff, *supra* note 2 and Zaring, *supra* note 2.

alternatives, such as enforcement actions brought under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA),⁴⁷ which has been responsible for the bulk of the civil penalties imposed on banks post-financial crisis. The criminal penalties paid by banks in 2015 were no aberration but part of a developing trend that is likely to continue in the years to come, even if the numbers of banks prosecuted will likely decline with the Swiss Bank Program winding down.

Despite the massive criminal penalties, it is hard to evaluate the significance or adequacy of federal criminal prosecution efforts, and deep concerns remain. Recidivists face little in the way of additional punishment; calculations of penalties are non-transparent and fines may not even be as high as profits from criminal acts; compliance changes are implemented with very little public information; and individuals often remain unprosecuted. How can bank prosecutions be used to deter banks better and to rehabilitate them to prevent future crime? The move towards seeking guilty pleas from banks is an important step in the right direction. In the past, banks could avoid consequences for repeat criminal prosecutions since they lacked a criminal record, having settled prior cases using non-prosecution or deferred prosecution agreements. Now that prosecutors more often insist upon a criminal conviction in the form of a guilty plea in front of a judge, future violations may result in court-supervised compliance and penalties. The compliance terms of these agreements should themselves be taken more seriously, with public accountability in the form of monitors' reports, and careful auditing of compliance to test its effectiveness. If banks know that independent monitors will be testing compliance and reporting to a court and to the public, the compliance may be far more rigorous. Finally, prosecution of individuals may become more common if the new DOJ guidance takes hold and results in more charging of culpable individuals. Whether that occurs remains to be seen.

More resources may be dedicated to bank prosecutions, perhaps in future administrations.⁴⁸ Reform may also come from Congress, absent sufficient changes in practice from within the DOJ, or through enhanced supervision by federal judges. Federal legislation could require: (1) greater judicial supervision

47. Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. 101-73, 103 Stat. 183 (1989). For an insightful and quite detailed analysis of the use of FIRREA post-financial crisis, see Nan S. Ellis, Steven B. Dow & David Safavian, *Use of FIRREA To Impose Liability in the Wake of the Global Financial Crisis: A New Weapon in the Arsenal To Prevent Financial Fraud*, 18 U. PA. J. BUS. L. 119 (2015).

48. Presidential candidate Hillary Clinton has proposed dedicating still more resources towards corporate and bank prosecutions, accompanying a shift in enforcement priorities. See *Hillary Clinton: Wall Street Should Work for Main Street*, HILLARY FOR AM., <http://www.hillaryclinton.com/p/briefing/factsheets/2015/10/08/wall-street-work-for-main-street> [http://perma.cc/HR64-FEL8].

of deferred prosecution agreements, including through revisions to the Speedy Trial Act;⁴⁹ (2) revisions to the organizational sentencing guidelines to ensure deterrent fines; (3) longer statutes of limitations to assist in individual prosecutions;⁵⁰ and (4) greater transparency in corporate settlements, for which legislation recently passed in the U.S. Senate.⁵¹ These improvements would all be steps in the right direction, and might also give better incentives to prosecutors to focus on individual prosecutions, more stringent compliance oversight, and stronger penalties for recidivist corporations.

While real changes should be made to strengthen prosecutions of financial institutions, I am also optimistic that the public and political scrutiny of these cases will continue to push prosecutors to respond to the critics. If they do not, other regulators, Congress, and the judiciary may step in. As never before, prosecutors have made the targeting of banks centrally important as a tool for safeguarding the public from fraud and money laundering; enforcement actions against banking violations have grown; and post-Dodd-Frank⁵² regulation of banks has steadily increased in its reach and complexity.⁵³ Those regulations, among other changes less related to criminal accountability, incentivize whistleblowers to come forward, with the goal of encouraging individuals within banks to report financial misconduct to regulators and to prosecutors.⁵⁴ While the role of criminal law is and should be limited to only the most severe misconduct, with civil enforcement addressing regulatory violations, prosecutors have come to better appreciate the importance of criminal accountability for truly serious financial crimes. The aftermath of the financial crisis brought home how important it is for even the largest and the

49. For a discussion of how the Speedy Trial Act, Pub. L. 93-619, 88 Stat. 2076 (1975) (codified at 18 U.S.C. § 3161 (2012)), permits any deferral of a prosecution and for a proposal that organization-specific factors be added to the statute, see Garrett, *The Corporate Criminal*, *supra* note 5, at 1842-44.

50. For a discussion of possible legislation regarding each of these topics, see Garrett, *The Corporate Criminal*, *supra* note 5, at 1839-45.

51. The “Truth in Settlements Act” passed in the Senate on Sept. 21, 2015. See Truth in Settlements Act, S. 1109, 114th Cong. (as passed by Senate, Sept. 21, 2015).

52. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

53. For a description of the more than thousands of pages of regulations issued by federal agencies to implement Dodd-Frank and areas in which regulations still have yet to be drafted or finalized, see Dodd-Frank Progress Report, Third Quarter 2015, DAVIS POLK, http://www.davispolk.com/sites/default/files/Q32015_Dodd.Frank_.Progress.Report.pdf [<http://perma.cc/R8GV-USHJ>].

54. For a description of the SEC Office of the Whistleblower, and the relevant statute and SEC regulations, see, for example, 15 U.S.C. § 78u-6(h)(1)(B) (2012); Office of the Whistleblower, *Claim an Award*, SEC. EXCHANGE COMMISSION, <http://www.sec.gov/about/offices/owb/owb-awards.shtml> [<http://perma.cc/V99D-YFPB>]; Final Rules, <http://www.sec.gov/about/offices/owb/reg-21f.pdf> [<https://perma.cc/JG3L-K5VX>].

most powerful banks and bankers to be held accountable, including for crimes. In the future, hopefully the rise of bank prosecutions will result not just in record monetary penalties, but also in lasting reforms that effectively prevent the recurrence of serious financial crimes.

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Preferred Citation: Brandon L. Garrett, *The Rise of Bank Prosecutions*, 126 YALE L.J. F. 33 (2016), <http://www.yalelawjournal.org/forum/the-rise-of-bank-prosecutions>.

Appendix A.

FEDERAL BANK PROSECUTIONS, 2001-2014 (BY YEAR)

<i>Company</i>	<i>Year</i>	<i>Conviction, DP, or NP⁵⁵</i>	<i>Crime⁵⁶</i>	<i>Criminal Fine</i>	<i>Total Criminal Penalty⁵⁷</i>
HSBC	2001	NP	Securities fraud	\$0	\$0
BDO Seidman	2002	DP	Accounting fraud	\$0	\$32,000,000
Fulcrum Services, Inc.	2002	Conviction	Money Laundering	\$0	\$0
1st Union Transfer and Telegraph, Inc.	2003	Conviction	Money Laundering	\$0	\$272,734
Banco Popular de Puerto Rico	2003	DP	Bank Secrecy Act	\$0	\$43,200,000
Canadian Imperial Bank of Commerce	2003	DP	Accounting fraud	\$0	\$0

55. DP refers to a deferred prosecution agreement and NP refers to a non-prosecution agreement.

56. The crime column describes the primary offense category if multiple criminal offenses were named.

57. The total criminal penalty column includes sums denoted as a criminal fine, together with any forfeiture, restitution, community service payment, or other sum paid to prosecutors. That total penalty amount does not reflect additional sums paid separately to regulators, non-federal prosecutors, or enforcement authorities in other countries.

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Merrill Lynch	2003	NP	False Statements	\$0	\$950,000
AIG Financial Products Corp.	2004	NP	Securities fraud	\$80,000,000	\$80,000,000
AIG-FP PAGIC Equity Holding Company	2004	DP	Securities fraud	\$0	\$0
AmSouth Bancorp	2004	DP	Bank Secrecy Act	\$40,000	\$80,000
CDR Enterprises	2004	Conviction	False Statements	\$0	\$0
Consolidated Brokerage Company, Inc.	2004	Conviction	Fraud	\$0	\$0
Credit Lyonnais	2004	Conviction	False Statements	\$100,000,000	\$100,000,000
Edward D. Jones	2004	DP	Securities fraud	\$0	\$0
General Electric (GE)	2004	NP	FCPA	\$16,000,000	\$16,000,000
MAAF Assurances S.A.	2004	Conviction	False Statements	\$10,000,000	\$10,000,000
Bank of New York	2005	NP	Bank Secrecy Act	\$38,000,000	\$76,000,000
Consolidated Investments, Inc.	2005	Conviction	Fraud	\$500,000	\$1,907,400
GAF Financial Services Inc.	2005	Conviction	Money Laundering	\$0	\$0
KPMG	2005	DP	Tax	\$128,000,000	\$128,000,000
Riggs Bank / Riggs National Corp	2005	Conviction	Money Laundering	\$16,000,000	\$16,000,000
AIG	2006	NP	Securities Fraud	\$0	\$25,000,000
BankAtlantic	2006	DP	Bank Secrecy Act	\$10,000,000	\$10,000,000
German Bank HVB	2006	DP	Tax	\$16,195,999	\$32,391,998
HealthSouth Corp.	2006	NP	Securities Fraud	\$0	\$0
Mellon Bank	2006	NP	Theft	\$18.130,000	\$36,260,000
Prudential Equity Group, LLC	2006	NP	Securities Fraud	\$325,000,000	\$325,000,000
El Paso	2007	NP	FCPA	\$5,482,363	\$10,964,726

American Express Bank Int'l	2007	DP	Securities Fraud	\$55,000,000	\$110,000,000
Blue Cross Blue Shield of Rhode Island	2007	NP	Fraud	\$0	\$20,000,000
Omega Advisors	2007	NP	FCPA	\$500,000	\$1,000,000
NETeller PLC	2007	DP	Gambling	\$136,000,000	\$272,000,000
Union Bank of California	2007	DP	Bank Secrecy Act	\$21,600,000	\$43,200,000
United Bank for Africa	2007	NP	Obstruction of Justice	\$5,334,331	\$10,668,662
Beacon Rock Capital LLC	2008	Conviction	Securities Fraud	\$600,000	\$600,000
E-Gold Ltd	2008	Conviction	Money Laundering	\$600,000	\$2,350,000
Pac Equities, Inc.	2008	Conviction	Securities Fraud	\$0	\$10,362,690
Sigue	2008	DP	Bank Secrecy Act	\$0	\$30,000,000
Republic Services, Inc.	2008	NP	Immigration	\$1,000,000	\$5,000,000
Unum Group	2008	NP	Fraud	\$5,550,000	\$5,550,000
Alaska State Mortgage Company	2009	Conviction	Fraud	\$91,479	\$91,479
Capital Management and Asset Group	2009	Conviction	Money Laundering	\$12,800	\$1,508,321
Credit Suisse AG	2009	DP	IEEPA	\$0	\$536,000,000
Lloyds TSB Bank plc	2009	DP	IEEPA	\$0	\$350,000,000
Optimal Group	2009	NP	Gambling	\$0	\$38,364,836
UBS AG	2009	DP	Tax	\$0	\$1,160,000,000
WellCare Health Plans, Inc.	2009	DP	Health Care Fraud	\$0	\$160,000,000
ABN AMRO Bank N.V. (now Royal Bank of Scotland NV)	2010	DP	Bank Secrecy Act	\$0	\$1,005,000,000
Barclays Bank	2010	DP	IEEPA	\$0	\$298,000,000
BL Trading	2010	DP	Fraud	\$0	\$364,810
Deutsche Bank AG	2010	NP	Tax	\$0	\$1,107,266,306
First Funding Corporation, II	2010	Conviction	Tax	\$148,000	\$584,284

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General Reinsurance Corp.	2010	NP	Securities Fraud	\$0	\$19,500,000
Louis Berger Group	2010	DP	Fraud	\$18,700,000	\$18,700,000
Metropolitan Life Insurance Co. (MetLife)	2010	NP	ERISA violations	\$13,500,000	\$13,500,000
Pamrapo Savings Bank	2010	Conviction	Money Laundering	\$0	\$5,000,000
Trinity Trust Financial Services, LLC	2010	Conviction	Fraud	\$0	\$3,546,418
Wachovia	2010	DP	Bank Secrecy Act	\$50,000,000	\$50,000,000
Aon Corp.	2011	NP	FCPA	\$1,764,000	\$1,764,000
Baystar Capital Management LLC	2011	DP	Fraud	\$0	\$24,224,832
CommunityOne Bank	2011	DP	Bank Secrecy Act	\$0	\$800,000
GE Funding Capital Market Services, Inc.	2011	NP	Antitrust	\$40,000,000	\$100,000,000
Islamic Investment Co. of the Gulf (Bahamas) Ltd.	2011	NP	Tax	\$4,508,000	\$49,584,000
JPMorgan Chase & Co.	2011	NP	Antitrust	\$0	\$0
Ocean Bank	2011	DP	Bank Secrecy Act	\$0	\$21,996,000
UBS AG	2011	NP	Antitrust	\$0	\$0
Wachovia	2011	NP	Antitrust	\$0	\$0
Barclays Bank PLC	2012	NP	Fraud	\$160,000,000	\$160,000,000
BDO USA, LLP	2012	DP	Tax	\$0	\$31,136,546
Diamondback Capital Management, LLC	2012	NP	Securities Fraud	\$0	\$12,000,000
HSBC Bank U.S.A., N.A., and HSBC Holdings plc	2012	DP	Bank Secrecy Act	\$0	\$2,512,000,000
ING Bank, N.V.	2012	DP	IEEPA	\$0	\$619,000,000
MoneyGram Int'l, Inc.	2012	DP	Bank Secrecy Act	\$0	\$200,000,000
UBS AG	2012	NP	Fraud	\$400,000,000	\$400,000,000

Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. ("Rabobank")	2013	DP	Fraud	\$325,000,000	\$325,000,000
GB Check Cashing, LLC	2013	Conviction	Accounting Fraud	\$0	\$1,087,294
Liechtensteinische Landesbanke	2013	NP	Tax	\$0	\$23,841,542
Mercer S.M.E. Inc.	2013	Conviction	Antitrust	\$15,000	\$15,000
Royal Bank of Scotland plc	2013	DP	Fraud	\$150,000,000	\$150,000,000
UBS Securities Japan Co. Ltd.	2013	Conviction	Fraud	\$100,000,000	\$100,000,400
Wegelin	2013	Conviction	Fraud	\$22,050,000	\$57,871,400
Bank Leumi Group	2014	DP	Tax	\$41,230,695	\$198,230,695
Credit Suisse	2014	Conviction	Tax	\$1,136,988,986	\$1,803,488,986
Jefferies Group LLC	2014	NP	Fraud	\$25,000,000	\$25,000,000
JPMorgan Chase Bank, N.A.	2014	DP	Bank Secrecy Act	\$0	\$1,700,000,000
Lloyds Banking Group PLC	2014	DP	Fraud	\$175,000,000	\$175,000,000
Oicoss, LLC	2014	Conviction	Unlicensed Money Transfer	\$1,500,000	\$1,500,000
SunTrust Mortgage, Inc.	2014	NP	Fraud	\$0	\$3,500,000
Swisspartners Investment Network AG	2014	NP	Antitrust	\$0	\$3,500,000

Appendix B.

FEDERAL BANK PROSECUTIONS, 2015

<i>Company</i>	<i>Year</i>	<i>Conviction, DP, or NP⁵⁸</i>	<i>Crime⁵⁹</i>	<i>Criminal Fine</i>	<i>Total Criminal Penalty⁶⁰</i>
Aargauische Kantonbank	2015	NP	Tax	\$1,983,000	\$1,983,000
ARVEST Privatbank AG	2015	NP	Tax	\$1,044,000	\$1,044,000
Banca Credinvest SA	2015	NP	Tax	\$3,022,000	\$3,022,000
Banca dello Stato del Cantone Ticino	2015	NP	Tax	\$3,393,000	\$3,393,000
Banca Intermobiliare di Investimenti e Gestioni (Suisse) SA	2015	NP	Tax	\$0	\$0
Bank CIC (Schweiz)	2015	NP	Tax	\$3,281,000	\$3,281,000
Bank Coop, AG	2015	NP	Tax	\$3,223,000	\$3,223,000
Bank EKI Genossenschaft	2015	NP	Tax	\$400,000	\$400,000
Bank J. Safra Sarasin SA	2015	NP	Tax	\$85,809,000	\$85,809,000
Bank La Roche & Co. AG	2015	NP	Tax	\$9,296,000	\$9,296,000
Bank Linth LLB AG	2015	NP	Tax	\$4,150,000	\$4,150,000
Bank Sparhafen Zurich AG	2015	NP	Tax	\$1,810,000	\$1,810,000
Bank Zweiplus AG	2015	NP	Tax	\$1,089,000	\$1,089,000
Banque Bohhote & Cie SA	2015	NP	Tax	\$624,000	\$624,000
Banque Cantonale du Jura SA	2015	NP	Tax	\$970,000	\$970,000
Banque Cantonale du Valais	2015	NP	Tax	\$2,311,000	\$2,311,000
Banque Cantonale du	2015	NP	Tax	\$41,677,000	\$41,677,000

58. DP refers to a deferred prosecution agreement and NP refers to a non-prosecution agreement.

59. The crime describes the primary offense category if multiple criminal offenses were named.

60. The total penalty includes sums denoted as a criminal fine, together with any forfeiture, restitution, community service payment, or other sum paid to prosecutors. That total penalty amount does not reflect additional sums paid separately to regulators, non-federal prosecutors, or enforcement authorities in other countries.

Vaudoise						
Banque Cantonale Neuchateloise	2015	NP	Tax	\$1,123,000	\$1,123,000	
Banque Heritage SA	2015	NP	Tax	\$3,846,000	\$3,846,000	
Banque Internationale a Luxembourg (Suisse) SA	2015	NP	Tax	\$9,710,000	\$9,710,000	
Banque Pasche SA	2015	NP	Tax	\$7,229,000	\$7,229,000	
Banque Privee Edmond de Rothschild (Suisse) SA & Banca Privata Edmond de Rothschild (Lugano) S	2015	NP	Tax	\$45,245,000	\$45,245,000	
Baumann & Cie, Banquiers	2015	NP	Tax	\$7,700,000	\$7,700,000	
BBVA (Suiza) SA	2015	NP	Tax	\$10,390,000	\$10,390,000	
Berner Kantonalbank AG	2015	NP	Tax	\$4,619,000	\$4,619,000	
BHF-Bank (Schweiz) AG	2015	NP	Tax	\$1,768,000	\$1,768,000	
BNP Paribas S.A.	2015	Conviction	IEEPA	\$140,000,000	\$4,486,800,400	
BNP-Paribus (Suisse) SA	2015	NP	Tax	\$59,783,000	\$59,783,000	
Bordier & CIE	2015	NP	Tax	\$7,827,000	\$7,827,000	
BSI SA	2015	NP	Tax	\$211,000,000	\$211,000,000	
CommerceWest Bank	2015	DP	Bank Secrecy Act	\$1,000,000	\$2,219,783	
Commerzbank AG	2015	DP	Bank Secrecy Act	\$79,000,000	\$641,000,000	
Corner Banca SA	2015	NP	Tax	\$5,068,000	\$5,068,000	
Coutts & Co. Ltd.	2015	NP	Tax	\$78,484,000	\$78,484,000	
Credit Agricole (Suisse) SA	2015	NP	Tax	\$99,211,000	\$99,211,000	
Credit Agricole Corporate & Investment Bank	2015	DP	IEEPA	\$0	\$156,000,000	
Credito Privato Commerciale in liquidazione SA	2015	NP	Tax	\$348,900	\$348,900	
Deutsche Bank (Suisse) SA	2015	NP	Tax	\$31,026,000	\$31,026,000	
Deutsche Bank AG	2015	DP	Antitrust	\$625,000,000	\$625,000,000	

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Dreyfus Sons & Co. Ltd. Banquiers	2015	NP	Tax	\$24,161,000	\$24,161,000
E. Gutzwiller & Cie, Banquiers	2015	NP	Tax	\$1,556,000	\$1,556,000
EFG Bank European Financial Group SA, Geneva (EFG Group) & EFG Bank AG (EFG Bank)	2015	NP	Tax	\$29,988,000	\$29,988,000
Ersparniskasse Schaffhausen AG	2015	NP	Tax	\$2,066,000	\$2,066,000
Falcon Private Bank AG	2015	NP	Tax	\$1,806,000	\$1,806,000
Finacor S.A.	2015	NP	Tax	\$295,000	\$295,000
Finter Bank Zurich AG	2015	NP	Tax	\$5,414,000	\$5,414,000
Gonet & Cie	2015	NP	Tax	\$11,454,000	\$11,454,000
Graubundner Kantonalbank	2015	NP	Tax	\$3,616,000	\$3,616,000
Habib Bank AG Zurich	2015	NP	Tax	\$9,400,000	\$9,400,000
Hong Kong Entertainment (Overseas) Investments, Ltd.	2015	NP	Bank Secrecy Act	\$0	\$3,036,969
Hyposwiss Private Bank Geneve S.A.	2015	NP	Tax	\$1,109,000	\$1,109,000
Hypothekarbank Lenzburg AG	2015	NP	Tax	\$560,000	\$560,000
KBL (Switzerland) Ltd.	2015	NP	Tax	\$18,792,000	\$18,792,000
LBBW (Schweiz) AG	2015	NP	Tax	\$34,000	\$34,000
Luzerner Kantonalbank AG	2015	NP	Tax	\$11,031,000	\$11,031,000
Maerki Baumann & Co., AG	2015	NP	Tax	\$23,920,000	\$23,920,000
MediBank AG	2015	NP	Tax	\$826,000	\$826,000
Mercantil Bank (Schweiz) AG	2015	NP	Tax	\$1,172,000	\$1,172,000
Migros Bank AG	2015	NP	Tax	\$15,037,000	\$15,037,000
Nidwaldner Kantonalbank	2015	NP	Tax	\$856,000	\$856,000
PBZ Verwaltungs AG	2015	NP	Tax	\$5,570,000	\$5,570,000
Piguet Galland & Cie SA	2015	NP	Tax	\$15,365,000	\$15,365,000
PKB Privatbank AG	2015	NP	Tax	\$6,328,000	\$6,328,000
PostFinance AG	2015	NP	Tax	\$2,000,000	\$2,000,000

Privatbank Bellerive AG	2015	NP	Tax	\$57,000	\$57,000
Privatbank IHAG Zurich AG	2015	NP	Tax	\$7,453,000	\$7,453,000
Privatbank Reichmuth & Co.	2015	NP	Tax	\$2,592,000	\$2,592,000
Privatbank Von Graffenried AG	2015	NP	Tax	\$287,000	\$287,000
Ripple Labs, Inc.	2015	NP	Bank Secrecy Act	\$0	\$450,000
Rothschild Bank AG	2015	NP	Tax	\$11,510,000	\$11,510,000
SB Saanen Bank AG	2015	NP	Tax	\$1,365,000	\$1,365,000
Schaffhauser Kantonalbank	2015	NP	Tax	\$1,613,000	\$1,613,000
Schroder & Co. Bank AG	2015	NP	Tax	\$10,354,000	\$10,354,000
SCOBAG Privatbank AG	2015	NP	Tax	\$9,090	\$9,090
Societe Generale Private Banking (Lugano- Svizzera) SA	2015	NP	Tax	\$1,363,000	\$1,363,000
Societe Generale Private Banking (Suisse) SA	2015	NP	Tax	\$17,807,000	\$17,807,000
St. Galler Kantonalbank AG	2015	NP	Tax	\$9,481,000	\$9,481,000
Standard Chartered Bank (Switzerland) SA	2015	NP	Tax	\$6,337,000	\$6,337,000
Vadian Bank AG	2015	NP	Tax	\$0	\$4,253,000
Valiant Bank AG	2015	NP	Tax	\$3,304,000	\$3,304,000
Zuger Kantonalbank	2015	NP	Tax	\$3,798,000	\$3,798,000